IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8031 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MINAL V. DAVE, DAUGHTER OF C.U. TRIVEDI

Versus

VIKRAM N DAVE

Appearance:

1. Special Civil Application No. 8031 of 2003

MR NK MAJMUDAR for Petitioner No. 1

MR AJ SHASTRI for Respondent No. 1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 18/06/2003

ORAL JUDGEMENT

1. Rule. Mr.A.J.Shastri, learned Counsel for the respondent, waives service of notice of rule. With the

consent of the parties, the matter is taken up for final hearing today.

2. The present petition is preferred by the petitioner challenging the order dated 28-2-2003 passed by the learned Civil Judge, Vadodara in below Application Ex. 16 in Hindu Marriage Petition No.94/2000, whereby the request for filing the written statement has been rejected.

3. The contention raised on behalf of the petitioner is that since the petitioner is the wife and earlier there was scope of settlement and for one reason or another the written statement could not be filed. However, Mr.Majmudar submitted that the petitioner is ready to pay the cost which may be found it proper by the Court considering the facts and circumstances of the case and with a view to compensate the delay caused in filing of the written statement. He submitted that there is a good defence on the part of the petitioner and if the written statement is allowed to be filed, then the same would advance the cause of justice. Mr.Majmudar also submitted that if the permission is granted, within one week the written statement shall be filed and no time shall be asked for cross-examination of the original plaintiff whose examination-in-chief is over and he further submitted that the petitioner is also ready to give assurance to this Court for cooperating with the proceedings of the suit, if the direction is given to decide the suit within a stipulated time limit. He submitted that as such there is no intention on the part of the petitioner to cause delay in the proceedings of the suit.

4. On behalf of the respondent, Mr.Shastri submitted that attempts were made on the part of the petitioner to delay the proceedings of the suit and the learned Judge was constrained to reject the application considering the facts and circumstances of the case that the right to file written statement was closed long back and attempts were made on the part of the petitioner to delay the proceedings. However, Mr.Shastri has left the matter to the Court for the purpose of awarding of the cost, but he submitted that if the Hon'ble Court finds that in any case petitioner should be given opportunity to submit written statement by awarding cost to the respondent, some time bound programme may be given and the assurance of the petitioner may also be recorded with a view to see that there is no further delay or no attempts are made by the petitioner to delay the proceedings of the suit.

5. However, the learned Counsel appearing on both the sides have submitted that this Court may not record elaborate reasons, if permission to file written statement is to be granted by awarding suitable cost and also give time bound programme is to be given for decision of the suit.

6. Considering the above peculiar facts and circumstances of the case and more particularly in view of the fact that the petitioner is a wife and the dispute pertains to matrimonial dispute, I find that the learned Judge ought to have considered the matter from that angle. The learned Judge also ought to have considered whether the delay caused could have been compensated in terms of money by awarding cost. The aforesaid aspects is not considered and in any event, the proceedings of the suit are at a stage of cross-examination of the first witness of the plaintiff who is himself. Therefore, under the circumstances and in view of the aforesaid submissions made by the learned Counsel appearing for both the sides for leaving the matter to the discretion of the Court, I find that the petitioner should be permitted to file written statement on payment of the cost of Rs.5,000/= (Rupees five thousand only) towards the delay caused in filing the written statement and I also find that with a view to se that no attempts are made on the part of the petitioner to delay the proceedings of the suit, suitable directions are required to be issued. Since the learned Counsel for both the sides have insisted for not to record reasons for quashing of the order, I find it proper not to record reasons further.

7. In view of the aforesaid discussion, I am of the view that the following directions shall meet with the ends of justice:

7.1 The order dated 28-2-2003 passed by the learned 6th Jt. Civil Judge (S.D.), Vadodara below Application Ex.16 in H.M.P. No.94/2000 is quashed and the Application Ex.16 is allowed on condition that the petitioner pays the amount of Rs.5,000/= (Rupees five thousand only) as the cost to the respondent towards the delay caused in filing the written statement. Such amount of cost is to be paid within one week from today.

7.2 After the amount is paid and it is so reported to the Court, the trial Court shall allow the petitioner to submit the written statement and the petitioner shall simultaneously submit the

written statement.

7.3 The directions No.7.1 and 7.2 shall not operate if there is failure on the part of petitioner to pay cost of Rs.5,000/= to Respondent.

7.4 The petitioner shall not seek any adjournment on the date fixed for cross-examination of the respondent-plaintiff. The petitioner shall abide by assurance given for cooperation and for not to delay the proceedings.

7.5 The petitioner as well as the respondent shall cooperate with the proceedings of the suit and the trial Court shall also give due priority and shall make an attempt to dispose of the suit as early as possible, preferably within a period of six months from the date of receipt of the writ of this Court.

8 The petition is allowed in terms of the aforesaid directions. Rule made absolute accordingly. Direct service is permitted.

18-6-2003 (Jayant Patel, J.)

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